

REMARKS/ARGUMENTS

The Examiner has rejected all of the pending claims 15, 17-21, and 23-42.

Claims 27-34 and 38-40 were rejected under 35 U.S.C. §112 because the specification "does not reasonably provide enablement for preventing ... migraine headaches." The Examiner suggested that claim 27 be amended from "the treatment or prevention of migraine in a subject in need of such treatment or prevention" to "treating or reducing the risk of a migraine in a subject in need thereof" to overcome the rejection. Claim 27 has been so amended. Claims 28-34 and 38-40 are dependent on claim 27. Accordingly, the rejection of claims 27-34 and 38-40 under 35 U.S.C. §112 should be withdrawn.

Claims 15, 17-21, and 23-26, 35-37, 41 and 42 were rejected under 35 U.S.C. §112 for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that independent claims 15 and 42 fail to recite operative amounts of the claimed herbal ingredients. It was suggested that the phrase "effective amounts of" be inserted after the word "comprising" in both claim 15 and 42, or that the limitations recited in claims 23-25 could be incorporated into claims 15 and 42 to overcome the rejection. Applicant has amended claims 15 and 42 accordingly. Claims 17-21, and 23-26, 35-37 and 41 are dependent on claim 15, as amended, and would likewise overcome the rejection. Accordingly, we respectfully request the withdrawal of the rejection under 35 U.S.C. §112 of claims 15, 17-21, and 23-26, 35-37, 41 and 42.

Claims 15, 17-21, and 23-42 were also rejected under 35 U.S.C. §103(a) as obvious over Wyandt et al. (Drug Topics, June 98 - PROMT Abstract), Castleman (The

Healing Herbs, 1991), Marles et al. (J. Nat. Prod., 1992), the PDR for Herbal Medicines (published Spring 1998), and the admitted state of the art, in view of Thys-Jacobs (US 5,443,850). The Examiner suggested "that claims 23-25 be appropriately incorporated into independent claims 15 and 42, and that 30-33[sic 32] be appropriately incorporated into independent claim 27, so as to adequately define and distinguish the invention with respect to the amount ranges of the claimed herbal ingredients that provide for unexpected (synergistic) beneficial effects." Applicant has amended claims 15, 27 and 42 accordingly. The declaration of Stefan Spiess illustrates unexpected results for the herbal pharmaceutical composition when the components of the composition are within the ranges in claims 15, 27, and 42. Claims 23-25 and 30-32 have been cancelled. Accordingly, we respectfully request the withdrawal of the rejection of claims 15, 17-21, and 23-42 under 35 U.S.C. §103(a) as obvious over the cited references.

It is respectfully submitted that all of the rejections have been overcome by the amendments contained herein.

Applicant does not believe that any fees are due at this time, however, if any fees or charges are required, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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